

Carol E. Dinkins cdinkins@velaw.com
Tel +1.713.758.2528 Fax +1.713.615.5311

July 27, 2012

By Email & US Mail

William H. Hyatt, Jr., Esq.
Coordinating Counsel, Lower Passaic River
Cooperating Parties Group
K&L Gates
One Newark Center, Tenth Floor
1085 Raymond Blvd.
Newark, NJ 07102

Dear Mr. Hyatt:

This letter is in follow up to mine of July 23, 2012, in which through you we advised the Settling Parties who are respondents to Administrative Order on Consent, CERCLA Docket No. 02-2012-2015, that Occidental Chemical Corporation (Occidental) had notified USEPA Region 2 of its intent to comply with Unilateral Administrative Order CERCLA Docket No. 02-2012-2020. The latter-referenced order requires that Occidental on or before July 30 submit a good faith offer to the River Mile (RM) 10.9 Settling Parties to implement the Statement of Work (SOW), in whole or in part. This letter conveys Occidental's good faith offer to implement, in part, the SOW by taking certain steps to make available to the Settling Parties the existing upland processing facility (UPF) utilized in the Non-Time Critical Removal Action at RM 3.2. As you will see, Occidental's good faith offer, if accepted, would provide the Settling Parties material advantages, including significant savings of both time and money and the benefit of a "road map" of the recent successful experience in a Lower Passaic River sediment removal action more than twice as large as that contemplated at RM 10.9.

Section II of the SOW sets forth the Work to be performed. The components of Occidental's good faith offer could play a role in various aspects of implementation of the SOW. We identify a number of these below in a list that we believe is representative, not exhaustive. Additionally, it is likely the Basis of Design Report and the Pre-Final and Final Design Reports well may contain proposed activities in which the components of this good faith offer could play a role.

Vinson & Elkins LLP Attorneys at Law
Abu Dhabi Austin Beijing Dallas Dubai Hong Kong Houston London Moscow
New York Palo Alto Riyadh San Francisco Shanghai Tokyo Washington

First City Tower, 1001 Fannin Street, Suite 2500
Houston, TX 77002-6760
Tel +1.713.758.2222 Fax +1.713.758.2346 www.velaw.com

Paragraph II.B.1 sets forth the items to be included in the Removal and Capping Work Plan/Basis of Design Report (BODR), which items include the following:

- Methods of sediment removal including resuspension/turbidity control, transport, **offloading, stockpiling, and treatment**; treated sediment disposal; process water treatment and discharge; capping; cap materials transport, and cap placement (emphasis added)
- Proposed siting/locations of staging and processing
- Real estate and easement requirements
- Substantive requirements of ARARs
- Implementation contracting strategy

Paragraph II.B.2 sets forth items to be included in the Pre-Final Design, which items include the following:

- Sediment Treatment Plan
- Process Water Treatment and Discharge Plan
- Sediment Transport and Disposal Plan
- Permits and other legal requirements, unless work will occur entirely on-site, in which case the submittal shall address substantive requirements of ARARS/TBCs documentation

Paragraph II.B.3 specifies removal and capping implementation activities, including “The Settling Parties shall acquire and/or lease property . . . and transport sediment to . . . disposal location(s).”

Occidental offers to implement in part the SOW as follows:

If the Settling Parties cannot have all removed sediment handled by treatment technology vendors, it will be necessary for the remaining portion of the sediment to be dewatered prior to disposal, or the vendors may need the sediment dewatered before treatment. Having just successfully completed a Non-Time Critical Removal Action, Phase I, at RM 3.2, Tierra Solutions Inc. (Tierra)*, which conducted that work on behalf of Occidental, has in place an upland processing facility (UPF) adjacent to the Lower Passaic River. Occidental and Tierra, on behalf of Occidental, offer the following as implementation, in part, of the SOW:

1. The ground lease (the "Lease") between Tierra and Morris Fairmont Associates ("Morris") for the Phase I Removal Action UPF will expire by its terms on October 31, 2012. Tierra, on behalf of Occidental, offers to negotiate with Morris to extend the term of the Lease for an additional twelve (12) months: November 1, 2012 through October 31, 2013 (the "Lease Extension"). Provided that Tierra and Morris are able to reach agreement on commercially-reasonable terms for said Lease Extension, Tierra, on Occidental's behalf, will formally amend the Lease to include the Lease Extension, which amendment would contain a clause permitting assignment of the lease to the Settling Parties.

2. Tierra, on Occidental's behalf, would offer to pay to Morris the Lease rent and maintain any financial assurance and insurance coverage required under the Lease for the first nine (9) months of the Lease Extension. Occidental expects that the Settling Parties would accept an assignment of the Lease and pay the remainder of the Lease rent and all related Lease costs for the final three (3) months of the Lease Extension.

3. Following completion of the Time Critical Removal Action, the Settling Parties would be responsible for decontamination of the equipment and for restoration of the leased premises. The equipment was decontaminated following completion of Phase I of the Non-Time Critical Removal Action and the leased property shortly will have been sampled to confirm that it was restored to its pre-leased condition. Tierra will provide a copy of that sampling report.

* In this letter transmitting Occidental's good faith offer, all references to Tierra Solutions, Inc. also shall constitute reference to Maxus Energy Corporation (Maxus).

4. The activities conducted under the removal action contract (the "Contract") between Tierra and ARCADIS for the Phase I Non-Time Critical Removal Action are anticipated to be completed by August 31, 2012. Tierra, on behalf of Occidental, offers to negotiate with ARCADIS to extend the Contract schedule to allow the four (4) UPF sediment presses, the three (3) sludge holding tanks and the process water tank to remain at the UPF until October 31, 2012 (the "Contract Extension"). Provided that Tierra and ARCADIS are able to reach agreement on commercially-reasonable terms for said Contract Extension, Tierra, on Occidental's behalf, will formally amend the Contract to include the Contract Extension. Tierra would arrange for the dewatering equipment to remain onsite until October 31, 2012, so that the Settling Parties have it available if the Pre-Final Design anticipates a need for use of dewatering equipment.

5. Tierra, on Occidental's behalf, would pay to ARCADIS the costs associated with the Contract Extension through October 31, 2012.

6. The permits (CERCLA permit equivalencies (PEs)) related to the UPF (property use and plant operations) include Land Use (Waterfront Development and Flood Hazard Area and Water Quality Certification), Air Pollution Control, and Surface Water Discharge. These PEs pertain specifically to the UPF's use during the Phase I Non-Time Critical Removal Action and are issued to Tierra Solutions, Inc. As such, each PE would need to be transferred/assigned to another entity in accordance with NJAC, through approval by NJDEP in consultation with USEPA, so as to relieve Tierra of any further obligations under the PEs. Further, each PE will require some form of amendment to address project-specific requirements, e.g., compliance sampling and operational/expiration dates.

7. Tierra, on Occidental's behalf, would transfer ownership to the Settling Parties of the sheet piling that it used in the Phase I Non-Time Critical Removal Action, which the Settling Parties thereafter can utilize in the RM 10.9 Time Critical Removal Action and/or sell for scrap metal or other recycling or reuse after completion of the Time Critical Removal Action. Occidental expects that the Settling Parties will pay all costs associated with steel handling, transportation and any storage.

This good faith offer is tendered as a settlement and cannot be used against Occidental, Maxus or Tierra in any litigation regarding cost recovery and/or cost allocation for any Passaic River remedial or other action, including without limitation, the RM 10.9 Removal Action.

Tierra's costs to date for having located the UPF site; having designed, acquired, constructed and permitted the UPF; and having acquired the steel sheet piling have constituted approximately \$12 million in expenditures, so the Settling Parties will experience a considerable cost savings by having the UPF available for their use.

Additionally, the siting, design, permitting and construction of the UPF consumed eighteen months of considerable effort, and we estimate that for the Settling Parties to replicate the existing UPF would consume six to eighteen months of effort and commensurate expense. Having available the UPF will save the Settling Parties the time and effort of locating a site in this highly-urbanized and crowded area and designing a de-watering facility, of negotiating with other property owners, and of encountering potential difficulties in achieving permit equivalencies for such a facility. This existing UPF availability will reduce the likelihood of project delays that could occur while the Settling Parties seek property, then develop the necessary customized designs for the new property, its layout, the location, and other activities, and assist the Settling Parties in completing more rapidly the implementation of this Time Critical Removal Action than would be possible absent the availability of this existing UPF. Occidental believes, based on Tierra's experience with the Phase I Non-Time Critical Removal Acton, that absent the use of the Tierra UPF, it is unlikely the Settling Parties will be able to complete the removal action on the schedule contemplated by EPA. Thus, the benefits of Occidental's offer to the Settling Parties go well beyond the purely monetary considerations set forth above.

In addition to the funds already expended by Tierra, the extension of the lease and maintenance onsite of the de-watering equipment as offered above will cause Tierra to incur over \$2 million in expenditures, more than \$200,000 of which is already committed.

The Settling Parties are hereby advised that time is of the essence. Given that Tierra must deal with third parties in making the UPF available, that those third parties have business opportunities other than making available the UPF to the Settling Parties, and that Tierra, on behalf of Occidental, has already incurred and continues to incur significant costs in keeping such third parties in a "holding pattern," we ask that the Settling Parties advise us of their intent to accept this good faith offer as soon as practicable but in no event later than August 14, 2012, which under the meeting schedule customarily followed by the Cooperating Parties Group would be its next regularly-scheduled meeting date. In order to advance negotiations between the parties, Tierra intends to send to the Settling Parties draft agreements by Friday, August 3rd, with the objective of achieving execution of the

agreement(s) among the Settling Parties, Tierra, on behalf of Occidental, and Occidental to memorialize these arrangements on or before August 27, 2012.

If you would like to schedule a meeting for us to describe this offer and the related agreement(s) and answer any questions you might have about it, we are available to meet in person in Newark on Tuesday, July 31, 2012 and again on Tuesday, August 7, 2012.

I look forward to hearing from you.

Very truly yours,

A handwritten signature in black ink that reads "Carol Dinkins". The signature is written in a cursive, flowing style.

Carol E. Dinkins

cc: Sarah Flanagan, Assistant Regional Counsel
Stephanie Vaughn, Remedial Project Manager / Project Coordinator

US 1506841v.1